

1
2 FINDINGS OF FACT

3 I

4 Floyd E. Stranahan owns property near the White Road and Pullman Highway
5 (Highway No. 195) in Spokane County, State of Washington.

6 II

7 The Spokane County Air Pollution Control Authority (SCAPCA) is responsible for
8 controlling the emissions of air contaminants in Spokane County, and the Board of Directors
9 have set up boundaries for "No Burn Areas" and "Permitted Burn Areas."

10 In the permitted "Burn Areas," a permit is required to burn except for certain days
11 designated by SCAPCA in the Spring and Fall for burning of household yard and gardening
12 wastes called "Natural Vegetation."

13 III

14 On September 29, 1991, SCAPCA received a complaint from a resident living on
15 property owned by Floyd Stranahan that there was burning on the bluff just north of White
16 Road and west of the Pullman Highway in Spokane County, an area where burning is legal
17 with a proper permit.

18 Fred Gray of SCAPCA sent Mike Conley, Enforcement Officer and Air Quality
19 Specialist to the scene to investigate the report.

20 IV

21 Inspector Conley arrived in the vicinity of W. 312 White road at approximately
22 8:45 a.m. on September 29, 1991, and found two small fires about 2 1/2 feet in diameter on a
23 dirt road in a field. The fires included the burning of paper and some plastic from two
24 garbage sacks.

1 He talked to Stranahan who was painting a fence about five hundred feet away from the
2 fires.

3
4 V

5 Stranahan admitted starting the fires to burn papers and other garbage that he had
6 picked up on the White Road, a County Road leading to property that he owned. He admitted
7 not having a permit to burn, but wanted to dispose of the garbage that he called "illegal
8 dumping" because of a bear in the area who had been ripping open garbage sacks and
9 destroying bee hives. The bear had been a pesty problem in the area.

10 VI

11 Conley gave Stranahan Field Notice of Violation Number 4956 in violation of Section
12 6.01 of Regulation I, "Open Fires," and told him to put out the fires. Stranahan cooperated
13 and put out the fires with buckets of water that he had in a barrel.

14 VII

15 Stranahan met with Mabel Caine, Compliance Administrator for SCAPCA on
16 October 8, 1991, and he indicated to her why he had started the fires and told her about the
17 bear problem.

18 There is no dispute that he started the burn, and he testified that he should have hauled
19 the garbage sacks away.

20 VIII

21 On November 1, 1991, Caine issued Notice and Order of Assessment Civil Penalty
22 No. 4956 in the amount of one thousand dollars (\$1,000) for alleged violation of SCAPCA's
23 Section 6.01, Regulation I, "Open Fires."

24 On November 18, 1991, Stranahan applied for a mitigation of the penalty and was
25 denied.

IX

On December 19, 1991, he appealed the civil penalty order, which became PCHB Case Number 91-269.

X

Stranahan, who owns and operates a hundred acre tree farm, often obtains slash burning permits from the Department of Natural Resources (DNR), and cooperates with them to do controlled burns.

XI

Stranahan has received three prior notices of alleged burning violations from SCAPCA:

- 1) October 1982 -- in which he received a warning for burning a stump without a permit.
- 2) December 1986 -- where he paid a \$25.00 penalty because he used a tire to start a fire.
- 3) March 1990 -- where an alleged violation was dismissed by SCAPCA because of administrative error.

XII

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.
From these Findings of Fact, the Board issues these:

CONCLUSIONS OF LAW

I

The Pollution Control Hearings Board has jurisdiction over this appeal. Chapter 43.21B and Chapt. 70.94 RCW.

1
2 II

3 Chapter 70.94 RCW, the Washington Clean Air Act, (Act) authorizes SCAPCA to
4 implement provisions of the Act by establishing rules and regulations controlling burning in
5 Spokane County, State of Washington.

6 The Board takes official notice of SCAPCA's Article VI, Regulation I which is on file
7 in the Board's office.

8 III

9 Article VI, Section 6.01(F)(6)(d)(4) of SCAPCA's Regulation I, permits small open
10 fires to be burned in the vicinity of Stranahan's property, which is within the designated
11 burning area, provided that a burning permit is obtained from SCAPCA, and that all other
12 regulations within Regulation I are met.

13 IV

14 There are only two issues in this case. The first one, the question of responsible party
15 for setting the fires, has been decided by Stranahan testifying that he started the fires to burn
16 garbage. (Findings of Fact V and VII).

17 The second issue is the reasonableness of the one thousand dollar penalty

18 Washington State Law authorizes a penalty of up to ten thousand dollars for each
19 violation for each day. (RCW 70.94.431) (Amended in 1991). The amount of the penalty is
20 dependent upon several factors, including the magnitude of the violation, past history, past
21 violation, conduct and cooperation.

22 In this instance the incident was Stranahan's fourth alleged violation in which the
23 appellant was cited in a period of nine (9) years. The first was a warning; the second he paid
24 a twenty-five dollar (\$25) penalty; and the third was dismissed. (Finding of Fact XI).

The igniting of the fires in a field could have been a safety hazard. However, the fires were small in nature, not large enough to create a nuisance, and he extinguished them at Conley's suggestion.

Also, Stranahan does cooperate with the DNR in responsible, legal slash burning

The purpose of a penalty is not to punish, but to change behavior.

V

In balancing the above factors, the Board concludes that SCAPCA's Civil penalty should be affirmed, but some reduction of the penalty is merited.

VI

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

From the foregoing, the Board issues this:

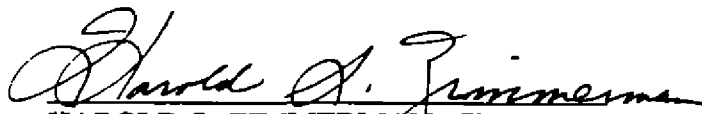
ORDER

The Notice and Order of Assessment of Civil Penalty No 4956, one thousand dollars (\$1000) is hereby AFFIRMED, but seven hundred dollars (\$700) is suspended, providing that Floyd Stranahan does not violate air pollution laws related to burning for two years from the date of this Order.

DONE this 28th day of July, 1992.

POLLUTION CONTROL HEARINGS BOARD


ANNETTE S. MCGEE, Presiding


HAROLD S. ZIMMERMAN, Chairman

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FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB NO. 91-269 (7)